Attorney Docket No.: 15685P093 **PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS

In re application of:	)	
	)	Examiner: Naghmeh Mehrpour
Uhlik et al.	)	
	)	Art Unit: 2617
Application No: 09/813,386	)	
	)	
Filed: March 20, 2001	)	
	)	
For: METHOD AND APPARATUS FOR RESOURCE MANAGEMENT IN A WIRELESS DATA COMMUNICATION SYSTEM	)	

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Assistant Commissioner For Patents
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APPEAL BRIEF
IN SUPPORT OF APPELLANT'S APPEAL
TO THE BOARD OF PATENT APPEALS

Applicants (hereinafter "Appellants") hereby submits this Brief in support of an Appeal from a decision of a Final Office Action mailed April 3, 2007, and sustained in a Notice of Panel Decision from Pre-Appeal Brief Review mailed August 13, 2007, for the above-referenced case. Appellants respectfully request consideration of the accompanying Appeal by the Board of Patent Appeals for allowance of the invention as presently recited in the claims.

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I. REAL PARTY IN INTEREST

The real party in interest of the above-referenced U.S. Patent application is ArrayComm, Inc. of 2480 N. First Street, Suite 200, San Jose, California, 95131-1014, to whom the application has been assigned.

II. RELATED APPEALS AND INTERFERENCES

To the best of Appellants' knowledge, there are no prior or pending appeals, interferences, or judicial proceedings related to the subject matter of this appeal that will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

No Claims have been canceled in the above-referenced application.

Claims 1-25 are pending in the above-referenced application.

Claims 1-25 were finally rejected in the Final Office Action mailed April 3, 2007, and are the subject of this appeal. This Brief mainly argues the independent claims, 1, 8, and 15, and dependent claims 5 and 12. The basis for rejection is set forth below.

IV. STATUS OF AMENDMENTS

In response to the Final Office Action mailed April 3, 2007, Appellants filed a Notice of Appeal and Pre-Appeal Brief Request for Review on June 19, 2007, which was entered June 19, 2007.

A Notice of Panel Decision from Pre-Appeal Brief Review was mailed on August 13, 2007 in response to Appellants' Notice of Appeal filed June 19, 2007.

This Brief is submitted in response to the Panel Decision.

A copy of all claims on appeal is attached hereto as Appendix A.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The claims are summarized as follows. In the summary below, the referenced portion of the Specification should be construed as only representative of the teachings that support the claimed feature(s). Thus, the cited portions are sufficient to support the claim, but are not necessarily the exclusive support in the Specification for such claim features. The arguments

below focus mainly on claims 1, 5, 8, 12, and 15. The arguments made with respect to these claims are equally applicable to the remaining claims.

1. A method comprising:

a communication device establishing a wireless communication session with a remote user terminal, the wireless communication session having associated therewith a session time limit; [p. 7, line 2 to p.8, line 11]

the communication device detecting a session renewal; and [p. 8, line 18 to p. 9, line 11]

the communication device altering the session time limit in response to detecting the session renewal. [p. 7, line 20 to p. 9, line 11]

5. (Previously Presented) The method of claim 1, wherein the communication device altering the session time limit comprises the communication device extending the session time limit by a time equal in duration to the original duration of the session time limit. [p. 8, line 21 to p. 9, line 1]

8. (Previously Presented) In a communication system, a method comprising:

a communication device providing a session to a remote user terminal, the session having associated therewith a first session time limit; [p. 7, line 2 to p.8, line 11]

the communication device determining whether a session renewal has been generated; and [p. 8, line 18 to p. 9, line 11]

upon lapse of the first session time limit, the communication device, if having determined that a session renewal has been generated, renewing the session for a second session time limit, and if having determined that a session renewal has not been generated, terminating the session. [p. 7, line 20 to p. 9, line 11]

12. (Original) The method of claim 8 wherein the first and second session time limits are equal in duration. [p. 8, line 21 to p. 9, line 1]

15. (Previously Presented) An apparatus for managing communication channels in a wireless communication system, the apparatus comprising: [Figs. 5 and 6]

a session lifespan means for providing a time limit to a communication session with an external device, the communication session characterized by an ability of the external device to have access to wireless communication channels for exchanging data, the session lifespan means further for detecting a session renewal by determining whether a predetermined condition results in a session renewal; and [p. 7, line 2 to p. 9, line 11]

a session management means for altering the time limit in response to the predetermined condition. [p. 9, line 21 to p. 11, line 2]

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

CLAIM REJECTIONS UNDER 35 U.S.C. § 102

Claims 1, 4-8, 11-23 and 25 were rejected under 35 U.S.C. § 102(e) as being anticipated by US Patent Publication Number 2002/0146129 of Kaplan et al. (hereinafter "Kaplan").

CLAIM REJECTIONS UNDER 35 U.S.C. § 103

Claims 2-3, 9-10 and 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent Publication Number 2002/0146129 of Kaplan et al. (hereinafter "Kaplan"), in view of US Patent Publication Number 2002/0087716 of Mustafa (hereinafter "Mustafa").

VII. ARGUMENT

In this section, the independent claims 1, 8, and 15 are argued together, seeing the issues raised in the rejection apply across all claims. The arguments are further supported by an example as provided with a more detailed discussion with reference claims 5 and 12. The resolution of the issues should apply to all claims.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102

Appellants' claim 1 includes language that is illustrative of the issue presented in the rejections of the claims. Claim 1 recites:

> a communication device establishing a wireless communication session with a remote user terminal, the wireless communication session having associated therewith a session time limit;
>
> the communication device **detecting a session renewal**; and

the communication device **altering the session time limit in response to detecting the session renewal**.

Claims 8 and 15 similarly recite a session renewal. No such feature is suggested in the cited references.

The following is a summary of the arguments raised in Appellants' Response filed January 16, 2007:

- The Office Action fails to assert a rejection of elements of the claimed invention. For example, Applicants' claims recite detecting a session renewal. Furthermore, a session time limit is altered in response to detecting the session renewal. There is no assertion of such teachings in the cited reference.
- Even assuming the Office Action attempted to reject the claim features mentioned above, the Office Action is very unclear as to how the reference supposedly discloses what is asserted. Thus, the Office Action fails under 37 CFR 1.104(c)(2) and MPEP § 706 to set forth the rejection with clarity and specificity so as to enable Applicants an opportunity to respond.
- Regardless of what is or is not asserted in the Office Action, the inactivity timeout period of the reference fails to disclose or suggest a session time limit as recited in Applicants' claims.

In reply to Appellants' Response, the Final Office Action provided a Response to Arguments section on pages 8 to 9. As Appellants have understood, the Response to Arguments section of the Final Office Action asserts the following:

1. The reference discloses a session.
2. The reference describes the importance of having security when having a user connect to a database via a wireless connection. The inactivity timeout period provides security.
3. The reference discloses how a user can change the period of the inactivity timeout period.

In response to Appellants' arguments against the above points as raised in the Pre-Appeal Brief Request for Review, the Panel did not respond, but simply sent the case on to the Appeals Board. Appellants repeat below the arguments.

Appellants note that nothing in the Response to Arguments section of the Final Office Action, as summarized above, even addresses any of Appellants' contentions raised in the Response of January 16, 2007. Thus, the Final Office Action is non-responsive to the Response. Finality of the rejection of the claims is improper. Each of points 1-3 raised in the Final Office

Action will be addressed, followed by a summary of Appellants' contentions from the Response of January 16, 2007, which have not been addressed by the Office.

Regarding point 1, Appellants did not argue whether Kaplan does or does not disclose a session. Although Kaplan discloses a session, Appellants express doubt that the session discussed in Kaplan is comparable to the session claimed. Although such an argument is not necessary to overcome the rejection, Appellants address the merit of the rejection. Appellants submit that the mere appearance of a word or phrase does not necessarily mean the words or phrases would be understood by one skilled in the art to mean the same thing. Per Kaplan, the "session" disclosed is a connection with a database through a web server or application server, via a wireless proxy server. See pars. [0036] and [0038]. The "session" in Kaplan refers to the recognition by the database that a particular user is allowed to access the records in the database. The session fails to provide anything in the way of protocol for accessing or communicating from the wireless device to the database. All such protocol issues will be handled by the web server or application server. One skilled in the art would understand the need to have the web server or application server to handle the protocol issues, seeing there is not a wireless communication session established between the wireless device and the database. Rather, the database is accessed by a web server, which understands the protocols of the database. The wireless device engages is a wireless communication connection to access the web server. Thus, whether or not the database recognizes a user (a user session), or not, there is no **wireless communication session** between the wireless device and the database. There is no teaching or suggestion in the reference that would be understood by one skilled in the art as a wireless communication session. In contrast, Appellants' claims recite a wireless communication session. That is, there is a session established between two wireless devices, and the session establishes protocols and/or configuration between the two wireless devices that will govern how the devices will communicate with each other. Thus, Appellants again submit that the "session" referred to in the reference fails to disclose or suggest the wireless communication session of Appellants' claims.

Regarding point 2, Appellants are unable to understand the significance of the point being raised in the Final Office Action. The fact that Kaplan discusses the importance of security in connecting wirelessly to a database does not have immediately apparent significance to Appellants' claims. The detail with which the Final Office Action discussed the security issues

presented in Kaplan would appear to indicate that the Office finds some significance with those teachings of the reference. However, the connection of those teachings to Appellants' claims is never explained, and Appellants submit that one skilled in the art would not understand a connection between what is argued in the Final Office Action and Appellants' claims. Appellants' claims do not recite "security," nor are the principles of security recited by the Office applicable to Appellants' arguments directed to wireless communication sessions and (wireless communication) session renewals. Appellants therefore must respectfully submit that Kaplan's teachings regarding security concerns are not shown to support a rejection of Appellants' claims, and indeed fail to support a rejection of Appellants' claims.

Regarding point 3, Appellants must again submit that the significance of the discussion in the Final Office Action is not apparent, as this section does not appear to have anything to do with Appellants' claims. In fact, the discussion of how a user can change the period of the inactivity timeout period illustrates differences between the system of Kaplan and Appellants' claims. These differences would explain to one skilled in the art that the reference being cited against Appellants' claims is not applicable to Appellants' claims. As clearly pointed to in the Final Office Action at page 9, the length of the inactivity timeout period can only be changed from a hardwired connection to the database (par. [0040] of Kaplan). Appellants submit that changing a timeout period from a hardwired connection to database fails to disclose or suggest anything related to Appellants' claimed invention. The requirement of a hardwired connection to be involved in the timeout period provides evidence that the timeout period fails to disclose or suggest a wireless communication session renewal as recited in Appellants' claims. Thus, Appellants claims recite features not disclosed or suggested by the cited reference.

As previously argued, Appellants submit that the reference fails to support a rejection of Appellants' claims for at least the following reasons. As per MPEP § 2131, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Citations omitted. In the examination, the Office should set forth clearly what is the rejection to afford Applicants the opportunity to respond. See, for example, 37 CFR 1.104 (c)(2): "In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. **The pertinence of each**

reference, if not apparent, must be clearly explained and each rejected claim specified." Furthermore, as per MPEP § 706, "The goal of examination is to **clearly articulate any rejection early in the prosecution process** so that the applicant has the opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity." Emphasis added. The Final Office Action fails to comply with 37 CFR 1.104 (c)(2) and MPEP § 706, and fails to set forth a prima facie case of anticipation under MPEP § 2131. The Final Office Action fails to reject at least one element of the claimed invention. For example, as noted above, Appellants' claims recite detecting a (wireless communication) session renewal. Furthermore, a session time limit is altered in response to detecting the session renewal.

Besides the defects of the Final Office Action itself, the Kaplan reference does not support a rejection of Appellants' claims. The discussion above regarding the difference in Kaplan's user session in contrast to Appellants' wireless communication session should be sufficient itself to overcome the rejection of claims under the reference. However, there are several other defects in the reference. The Kaplan reference discusses management of a wireless connection to a database. More particularly, the reference discusses saving the state of a user session, or a connection of a user to a database, to enable the user to "reconnect to a session that was timed out" and allow the user to continue "at the same point within the database at which he or she was working before his or her connection timed out." See par. [0039].

Appellants note that as per the reference, Kaplan's user session with the database is **closed**, and can later be **reconnected**, assuming the closure resulted from an inactivity period timing out. Nothing in the reference suggests that the wireless device is not still connected to the web or application server. In fact, the reference's discussion of the security issues (as noted above), would suggest that the wireless device is indeed **still connected**. The entire reason for the timeout of the user session in Kaplan is because the wireless connection is still active, and would allow someone to access the database if the user session with the database were not timed out. Furthermore, as Appellants have understood, there is no **session time limit** in the reference, in contrast to what is claimed. The user session in Kaplan continues for as long as the connection is active. Thus, the user session may be opened indefinitely, and will be (automatically) closed **only if activity** falls to a threshold (zero) for a period of time (the inactivity timeout period). The automatic closing of the user session for security purposes is about **inactivity**, or an activity level of the user session, and **not a wireless communication session time limit**. The inactivity results

in closing the user session when a fixed period of inactivity elapses. The inactivity period is not related to a length of the user session itself. In contrast, Appellants' claims recite a **session time limit** associated with a **session**.

In fact, as Appellants have understood the reference, once the session is restarted (note that the session must be started over, not renewed, which is discussed in more detail below) there is no threat of the session ending again until another period of inactivity (or the user closing the session, which is irrelevant to the discussion here). Thus, the user session may last indefinitely. There is no suggestion that the period of one user session would be the same as another user session. This is directed in contrast to what is recited in Appellants' claims 5 and 12. In these claims, Appellants recite that the session is extended by the same time period. In contrast, Kaplan's timeout period does not restart until a period of inactivity, which may be some unknown length of time. This further illustrates the fact that Kaplan's timeout period is about inactivity, not about a wireless communication session time limit. Thus, Kaplan fails to disclose or suggest Appellants' claims.

As an additional distinction over the cited reference, Appellants' claims recite a session renewal. Specifically in the claims, the session renewal can only be understood as a renewal of the wireless communication session. As Appellants have understood the reference, nothing in the Kaplan reference could be interpreted by one of skill in the art as a wireless communication session renewal as claimed. There is no suggestion of a renewal signal or a renewal request, or any other mechanism that could be understood as something to generate a session renewal. Solely for purposes of argument, even adopting the improper interpretation of the Final Office Action, if the user session is a session as claimed, it is a session that must be restarted (see par. [0040]), and not renewed or extended. Furthermore, Appellants' claims recite altering a wireless communication session time limit in response to detecting a wireless communication session renewal. Given that Kaplan fails to support a rejection of a session renewal, the reference further fails to disclose or suggest altering the session time limit in response to detecting the session renewal, for at least the same reasons.

Thus, Appellants submit that the Office Action fails to set forth a complete rejection of the claims for failing to address at least one element of the claimed invention. Furthermore, the reference fails to support an interpretation that would support a rejection of the claims under the reference. For at least these reasons, Appellants submit that the independent claims are not

anticipated by the cited reference. The remaining claims subject to the anticipation rejection are dependent on the independent claims, and thus are not anticipated by the reference for at least the same reasons set forth for the independent claims.

CLAIM REJECTIONS UNDER 35 U.S.C. § 103

The claim rejection made under 35 U.S.C. § 103 were all made based on the rejections under 35 U.S.C. § 102, which is discussed above. More particularly, the primary reference, Kaplan, upon which the anticipation rejection is based, is shown to be defective in many regards. The reference fails to support the interpretations provided in the Final Office Action. The reference fails to disclose or suggest at least one feature of the claimed invention, as set forth above, and so fails to disclose the independent claims. The remaining dependent claims must be patentable over the cited references unless the secondary reference, Mustafa, cures the deficiencies of Kaplan. It does not.

Appellants note that the Office has not asserted Mustafa as curing the deficiencies of Kaplan, and submit that Mustafa fails to cure the deficiencies of Kaplan. Mustafa discusses priority scheduling in a network. Specifically, the reference deals with data-link layer protocols for physical layer communication links (see Abstract). The reference does not even consider wireless connections. The reference is not applicable to wireless communication, and there is no reasoning provided by the Office to explain why Mustafa's teachings that are limited to wired connections should be applicable to wireless communication. Thus, whether or not the reference discloses priority scheduling, there is nothing to suggest that the teachings of the reference are applicable to wireless communication. Furthermore, the reference obviously cannot cure the deficiencies of Kaplan above, seeing that Mustafa fails to discuss wireless communication.

Appellants submit that the references alone are defective in rejection the claimed invention, and there is no motivation to combine the teachings of the references. Even assuming there were motivation to combine the teachings of the references, there is no combination of the references that can disclose or suggest the invention as recite in Appellants' independent claims. Thus, the references fail, whether alone or in combination, to recite at least one feature of Appellants' claims, and so fail to support an obviousness rejection of the claims, per MPEP § 2143.

VIII. CONCLUSION

Appellants respectfully submit that all appealed claims in this application are patentable and requests that the Board of Patent Appeals and Interferences overrule the Examiner and direct allowance of the rejected claims.

A single copy of this correct brief is submitted as per 37 C.F.R. §41.37(a). Appellant believes that no fee is required, as the fee of $500.00 to cover the appeal fee for one other than a small entity as specified in 37 C.F.R. §1.17(c) was submitted with the originally filed Brief. Please charge any shortages and credit any overcharges to our Deposit Account No. 02-2666.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP

Date: September 13, 2007

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IX. CLAIMS APPENDIX

1. (Previously Presented) A method comprising:

a communication device establishing a wireless communication session with a remote user terminal, the wireless communication session having associated therewith a session time limit;

the communication device detecting a session renewal; and

the communication device altering the session time limit in response to detecting the session renewal.

2. (Original) The method of claim 1, wherein the session renewal is caused by a priority status associated with the remote user terminal.

3. (Previously Presented) The method of claim 2, wherein the communication device detecting a session renewal further comprises the communication device receiving an indication of the priority status from the remote user terminal.

4. (Previously Presented) The method of claim 1, wherein the session renewal is caused by the communication device detecting active data exchange between the remote user terminal and the communication device prior to a lapse of the session time limit.

5. (Previously Presented) The method of claim 1, wherein the communication device altering the session time limit comprises the communication device extending the session time limit by a time equal in duration to the original duration of the session time limit.

6. (Previously Presented) The method of claim 1, wherein the communication device detecting the session renewal comprises the communication device receiving a session renewal from the remote user terminal.

7. (Original) The method of claim 1, wherein the session renewal is generated by the communication device.

8. (Previously Presented) In a communication system, a method comprising:

a communication device providing a session to a remote user terminal, the session having associated therewith a first session time limit;

the communication device determining whether a session renewal has been generated; and

upon lapse of the first session time limit, the communication device, if having determined that a session renewal has been generated, renewing the session for a second session time limit, and if having determined that a session renewal has not been generated, terminating the session.

9. (Original) The method of claim 8, wherein the session renewal is caused by a priority status associated with the remote user terminal.

10. (Previously Presented) The method of claim 9, wherein the communication device determining whether a session renewal has been generated further comprises the communication device receiving an indication of the priority status from the remote user terminal.

11. (Original) The method of claim 8, wherein the session renewal is caused by the communication device detecting active data exchange between the remote user terminal and a data network coupled to the communication device upon lapse of the session time limit.

12. (Original) The method of claim 8 wherein the first and second session time limits are equal in duration.

13. (Original) The method of claim 8, wherein the session renewal is received by the communication device from the remote user terminal.

14. (Original) The method of claim 8, wherein the session renewal is generated by the communication device.

15. (Previously Presented) An apparatus for managing communication channels in a wireless communication system, the apparatus comprising:

a session lifespan means for providing a time limit to a communication session with an external device, the communication session characterized by an ability of the external device to have access to wireless communication channels for exchanging data, the session lifespan means further for detecting a session renewal by determining whether a predetermined condition results in a session renewal; and

a session management means for altering the time limit in response to the predetermined condition.

16. (Original) The apparatus of claim 15, wherein the session lifespan means includes a timing mechanism to indicate lapse of the time limit.

17. (Previously Presented) The apparatus of claim 16, wherein the session management means is coupled to the timing mechanism, and wherein the session management means altering the time limit in response to the predetermined condition comprises the session management means indicating to the timing mechanism to delay or extend the time limit in response to the predetermined condition.

18. (Previously Presented) The apparatus of claim 15, wherein the session management means for altering the time limit in response to the predetermined condition further includes the session management means detecting at least one channel utilized by the external entity for data exchange.

19. (Previously Presented) The apparatus of claim 15, wherein the session management means for altering the time limit in response to the predetermined condition further includes the session management means detecting network congestion.

20. (Previously Presented) The apparatus of claim 19, wherein network congestion is characterized at least in part by a number of sessions open.

21. (Previously Presented) The apparatus of claim 19, wherein network congestion is characterized at least in part by a number of channels that are active.

22. (Original) The apparatus of claim 15, wherein the predetermined condition is caused by a message received from the external entity.

23. (Original) The apparatus of claim 15, wherein the predetermined condition is caused by an event generated by the session management means.

24. (Previously Presented) The apparatus of claim 15, wherein the time limit is determined based at least in part on a quality-of-service parameter of the external entity.

25. (Original) The apparatus of claim 15, further comprising means for exchanging data with said external entity and an external data network.

X. EVIDENCE APPENDIX

None.

XI. RELATED PROCEEDINGS APPENDIX

None.